

Chapter 500 - Mandatory Coverage

Subchapter 01 - Mandatory Coverage

50001.501 **Mandatory Social Security and Medicare Provisions**

CITATIONS: Soc. Sec. Act, Sections [210\(a\)\(7\)\(F\)](#) and [210\(p\)](#)

Section 13205 of Public Law 99-272, mandated Medicare (Hospital Insurance (HI)) coverage for State and local government employees hired (or rehired) after March 31, 1986. Section 11332 of Public Law 101-508 mandated Social Security and Medicare coverage for State and local government employees who are not members of a public retirement system and not covered by a Section 218 Agreement beginning July 2, 1991.

The mandatory Social Security and Medicare provisions are in the Internal Revenue Code (IRC). IRS determines whether an employee is a “member” of a public retirement system and what constitutes a “retirement system” for mandatory Social Security coverage purposes.

CAUTION: Mandatory Social Security coverage only applies after it is determined that the employee’s position is not covered by a Section 218 Agreement and the employee is not a member of a public retirement system.

A. Definition of Public Retirement System

For mandatory Social Security coverage purposes, a public retirement system is a pension plan maintained by a public employer that meets the requirements of IRC Section 3121(b)(7)(F). (IRS Revenue Procedure 91-40, and IRS Reg. Sec.31.3121(b)(7)-2 of the Employment Tax Regulations.) These requirements must be met for a retirement system to be used as an alternative to mandatory Social Security coverage.

NOTE: A retirement system for retirement system group coverage under a Section 218 Agreement is any pension, annuity, retirement or similar fund or system established by a State or political subdivision to cover the services or positions of its employees. For Section 218 purposes, the retirement system **does not need to meet the minimum benefit standards** required by IRS.

B. Example

An individual holds two positions with the same political subdivision. Wages earned in one position are covered for Social Security and Medicare under a Section 218 Agreement. The Social Security system is not a retirement system for this purpose. Therefore, mandatory Social Security applies to service in the other position, unless the employee is a member of a public retirement system with respect to that position. (IRS Regulations Section 31.3121(b)(7)-2(e)(1).)

50001.510 Mandatory Medicare Coverage

State and local government employees hired (or rehired) after March 31, 1986, are mandatorily covered for Medicare. Employees whose services are not covered for Social Security but who are required to pay the HI-only portion of the FICA tax are referred to as Medicare Qualified Government Employees (MQGE). (Employees covered under a Section 218 Agreement are already covered under Medicare.)

There are no referendums conducted for mandatory Medicare coverage, as is required for Medicare coverage under a Section 218 Agreement. Mandatory Medicare coverage does not apply to services already covered under a Section 218 Agreement nor does it apply to services statutorily excluded from mandatory Medicare coverage.

Employees who have been in continuous employment with the employer since March 31, 1986, who are not covered under a Section 218 Agreement nor subject to the mandatory Social Security and Medicare provisions, remain exempt from both Social Security and Medicare taxes, provided they are members of a public retirement system.

NOTE: See SL 50001.540 for Medicare coverage for public employees hired before April 1, 1986.

50001.520 Continuing Employment Exception

Services performed after March 31, 1986, by an employee who was hired by a State or political subdivision employer before April 1, 1986, are exempt from mandatory Medicare coverage if the employee is a member of a public retirement system and meets all of the following requirements:

- Employee was performing regular and substantial services for remuneration for the state or political subdivision employer before April 1, 1986;
- Employee was a bona fide employee of that employer on March 31, 1986;
- Employment relationship with that employer was not entered into for purposes of avoiding the Medicare tax; and
- Employment relationship with that employer has been continuous since March 31, 1986.

An employee hired before April 1, 1986 by a State employer and who transfers after March 31, 1986, to another State employer of the same State qualifies for the continuing employment exception, provided the transfer was made without a termination of the employee's overall employment relationship with that State. The same rule applies to an employee hired before April 1, 1986, by a political subdivision employer, who transfers after March 31, 1986, to another employer of the same political subdivision.

However, an employee hired before April 1, 1986, does not qualify for the continuing employment exception if after March 31, 1986, the employee transfers from a State employer to a political subdivision employer, or from a political subdivision employer to a State employer. Likewise, an employee does not qualify for the exception if the employee transfers from a political subdivision employer in one political subdivision to a political subdivision employer in a different political subdivision.

50001.530 Services Not Subject to Mandatory Medicare Coverage

The following services are not subject to mandatory Medicare coverage even though the services are performed by an employee hired after March 31, 1986:

- Services performed by individuals hired to be relieved from unemployment. (This does not include many programs financed from Federal funds where the primary purpose is to give the employee work experience or training.)
- Services performed in a hospital, home or other institution by a patient or inmate thereof as an employee of a State or local government employer.
- Services performed by an employee on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency.
- Services performed by non-resident aliens with F-1, J-1, M-1 and Q-1 visas.
- Services in positions compensated solely by fees that are subject to SECA (Self-Employment Contributions Act), unless Section 218 Agreement covers these services.
- Services performed by a student enrolled and regularly attending classes at the school, college or university where they are working, **unless Section 218 Agreement covers student services.**
- Services performed by an election worker or official whose pay in a calendar year is less than the amount mandated by law, **unless Section 218 Agreement covers election workers.** To find the coverage status of election workers for each State, click the Election Worker Coverage Chart (http://www.ssa.gov/slge/ElectionWorker_2005_Nov.doc).
- Services that would be excluded if performed for a private employer because it is not work defined as employment under Section 210(a) of the Social Security Act, **unless Section 218 Agreement covers certain agricultural services.**

50001.540 Voluntary Medicare Coverage

CITATIONS: Soc. Sec. Act, Section 218(n)

All States can execute a Section 218 Agreement with SSA to provide Medicare only coverage for employees who are members of a public retirement system and not covered under a Section 218 Agreement.

Employees who were hired prior to April 1, 1986, and who are not currently paying into Medicare, may not make Medicare contributions if the employee's services are not covered under Medicare.

50001.550 Mandatory Social Security and Medicare Coverage

Beginning July 2, 1991, Social Security and Medicare coverage is mandatory for State and local government employees who are not members of a public retirement system and who are not covered under a Section 218 Agreement, unless specifically excluded by law. The mandatory Social Security provisions also apply to those State and political subdivision employees who have the option to become members of the retirement system but have chosen not to do so (optionals) as well as those employees who are personally ineligible for membership in the retirement system (ineligibles).

Mandatory Social Security coverage ceases when a State or local government employee becomes a member of a public retirement system.

- If an employee was hired after April 1, 1986, and is not a member of public retirement system, the employee is covered for Social Security and Medicare. If the employee subsequently becomes a member of a retirement system, the employee ceases to be covered for Social Security (but not Medicare because

the employee was hired after April 1, 1986). Employees hired or rehired after March 31, 1986, remain covered for Medicare regardless of their membership in a retirement system.

- If an employee was hired prior to April 1, 1986, and was not a member of public retirement system, the employee is covered for Social Security and Medicare. If the employee subsequently becomes a member of a retirement system, the employee ceases to be covered for Social Security **and Medicare**.

NOTE: If mandatory Social Security coverage applies, an employer can provide an alternative plan to Social Security if it meets the minimum benefit requirements in the IRC Section 3121(b)(7)(F).

50001.560 Services Not Subject to Mandatory Social Security and Medicare Coverage

The following services are excluded from mandatory coverage. Some services, while excluded from mandatory coverage are optional exclusions under Section 218 and, therefore, may be covered under a Section 218 Agreement. The exclusions that may be covered under a Section 218 Agreement are noted.

- Services performed by individuals hired to be relieved from unemployment. (This does not include many programs financed from Federal funds where the primary purpose is to give the employee work experience or training.)
- Services performed in a hospital, home or other institution by a patient or inmate thereof as an employee of a state or local government employer.
- Services performed by an employee on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency.
- Services performed by non-resident aliens with F-1, J-1, M-1 and Q-1 visas.
- Services in positions compensated solely by fees that are subject to SECA (Self-Employment Contributions Act), unless Section 218 Agreement covers these services.
- Services performed by a student enrolled and regularly attending classes at the school, college or university where they are working, unless Section 218 Agreement covers student services.
- Services performed by an election worker or official whose pay in a calendar year is less than the amount mandated by law, unless Section 218 agreement covers election workers. To find the coverage status of election workers for each State, click the Election Worker Coverage Chart (http://www.ssa.gov/slge/ElectionWorker_2005_Nov.doc).
- Services that would be excluded if performed for a private employer because it is not work defined as employment under Section 210(a) of the Social Security Act, unless Section 218 Agreement covers certain agricultural services.

NOTE: If the services are covered under a Section 218 Agreement, they are subject to Social Security and Medicare under the terms of the agreement because coverage under a Section 218 Agreement supersedes all other considerations. First determine whether a worker's services are covered under an agreement; if not, coverage is determined under the mandatory coverage and exclusion rules.

50001.570 Effect of Mandatory Coverage on Section 218 Coverage

States may continue to enter into voluntary Section 218 Agreements to extend coverage to employees who are mandatorily covered for Social Security and to employees who are members of a public retirement system.

If an employee is mandatorily covered for Social Security and becomes a member of a public retirement system that is covered under a Section 218 Agreement, the employee is covered for Social Security under that agreement.

A. SECTION 218 AGREEMENTS EXECUTED BEFORE JULY 2, 1991

Services covered under Section 218 Agreements executed and effective before July 2, 1991 are not affected by the mandatory coverage provisions, regardless of whether such services are performed by employees who are or are not members of their employer's retirement system. Such services continue to be covered under the State's agreement after July 1, 1991.

B. SECTION 218 AGREEMENTS EXECUTED AFTER JULY 1, 1991

States may continue to enter into Section 218 Agreements to provide Social Security coverage for services performed by employees who are and are not members of their public employer's retirement system. SSA may execute such agreements even though mandatory coverage may apply to some or all of the services involved. For example, in 1992 a State extends coverage to all positions covered by the City's retirement system. If an employee who is mandatorily covered joins the retirement system, mandatory coverage ceases. However, the employee will be covered under the City's Section 218 Agreement.

C. MEDICARE-ONLY AGREEMENTS IN EFFECT BEFORE JULY 2, 1991

Medicare coverage obtained under a Section 218 Agreement prior to July 2, 1991 continues after July 1, 1991.

EXAMPLE: In 1987, a State obtained Section 218 Medicare coverage for employees of City X. Beginning July 2, 1991, services by City X employees were subject to mandatory Social Security coverage because the City didn't have a public retirement system. In 1995, City X established a retirement system for all City employees and mandatory Social Security coverage ceased. However, City X employees continue to be covered for Medicare under the State's Section 218 Agreement.

D. MEDICARE-ONLY AGREEMENT EXECUTED AFTER JULY 1, 1991

If a Section 218 Agreement for Medicare coverage was retroactive to periods before July 2, 1991, services performed by employees before July 2, 1991 are covered for Medicare under the Agreement. However, services performed after July 1, 1991 by employees who are not members of their employer's retirement system are mandatorily covered for Social Security.

E. ABSOLUTE COVERAGE GROUP LATER COVERED BY A RETIREMENT SYSTEM

Positions covered as an absolute coverage group under a State's Section 218 Agreement after July 1, 1991, continue to be covered under the Section 218 Agreement if the positions are later covered by a public retirement system.

EXAMPLE: A State's Section 218 Agreement for a City covered services performed in positions not covered by a retirement system, effective January 1, 1959. On July 1, 1994, the City established a public retirement system. Coverage under the Section 218 Agreement continues. The addition of a retirement system to such positions does not negate the coverage under the Section 218 Agreement.

F. ERROR MODIFICATIONS

Error modifications executed after July 1, 1991 may have a retroactive effective date prior to July 2, 1991 and coverage under error modifications will continue after July 1, 1991.

G. SERVICES OPTIONALLY EXCLUDED FROM SECTION 218 AGREEMENT

Under a Section 218 Agreement, a State can exclude from coverage certain services performed by members of any coverage group including retirement system coverage groups. If the Agreement does not specifically exclude these services, they are covered. Beginning July 2, 1991, most services that were optionally excluded under a Section 218 Agreement are covered by the mandatory coverage provisions unless the employee is covered by a public retirement system or the services are excluded from mandatory coverage.

EXAMPLE: A City's Section 218 Agreement excludes part-time positions that require less than 20 hours of work per week. The City's cafeteria has part-time employees who work part-time 15 hours per week. The City's retirement system membership is only for employees who work in full-time positions. Therefore, part-time employees of the cafeteria are subject to mandatory Social Security and Medicare.

50001.580 Rehired Annuitants

Under the IRS regulations, rehired annuitants are exempt from Social Security coverage (but not Medicare withholding) if the annuitant is employed by the same employer OR the annuitant is employed by a different employer who maintains the same retirement system. For example, if a teacher who retires from service with a school district that participated in a statewide teachers' retirement system begins to receive benefits from the system, and later becomes a substitute teacher in another school district that participates in the same statewide system, the employee is treated as a rehired annuitant.

If the annuitant is rehired in a position that is covered under a Section 218 Agreement, the rehired annuitant is covered for Social Security and Medicare under the Agreement. Section 218 Agreements take precedence over the mandatory coverage rules.

A. MEDICARE COVERAGE

Beginning April 1, 1986, rehired annuitants are mandatorily covered for Medicare. The continuing employment exception to Medicare does not apply because the original employment relationship terminated at retirement.

B. SECTION 218 COVERAGE

If an annuitant is rehired into a position which is covered under a Section 218 Agreement, the rehired annuitant's services are covered under the agreement.

EXAMPLE 1: A teacher who was covered under a State Retirement System retired and was hired as a bus driver. The bus driver position is covered under a Section 218 Agreement. The teacher is covered for Social Security and Medicare.

EXAMPLE 2: A teacher retires from a school district, starts collecting a pension under the State Retirement System, and returns to work for the same school district as a bus driver. The bus driving

position is not covered by a Section 218 agreement and is not covered by the State Retirement System. The teacher is a rehired annuitant and is not covered for Social Security but is covered for Medicare only.

C. SECTION 218 COVERAGE—DIVIDED RETIREMENT SYSTEM

If a rehired annuitant performs services in a position under the same covered divided retirement system from which the annuitant retired and the annuitant was part of the system that did not vote for coverage, the Social Security coverage status of the rehired annuitant's services depends on whether the annuitant is considered a new member of the retirement system upon reemployment.

If the rehired annuitant is considered a new member of the divided retirement system, services performed by the rehired annuitant are covered under the State's Agreement with that division of the retirement system that voted for Social Security coverage, in accordance with Section 218(d)(6)(C) of the Act.

If the rehired annuitant is not considered to be a new member of the divided retirement system upon reemployment, the rehired annuitant retains their vote (Social Security coverage status) under this same divided retirement system before retirement. If the rehired annuitant was part of the retirement system that did not vote for Social Security coverage, the IRS rules for mandatory coverage determine the Social Security coverage status of the rehired annuitant.